

Procurement Terms and Conditions for Services

1. DEFINITIONS

- 1.1 The following words and expressions shall have the meanings assigned to them, except where the context otherwise requires:

"Contractor" means the person, company or firm with whom the University places an Order for the Services, as identified in the Order;

"Fees" has the meaning given to it in Clause 4.1;

"Force Majeure Event" may be established on the grounds of either a physical or legal impossibility preventing the performance of the Services and obligations contemplated under these Terms and Conditions, and includes but is not limited to natural disaster, plagues or epidemics, terrorism, governmental act, war, rebellion, fire, civil commotion and insurrection;

"GCC VAT" means any value added tax which may become payable as a result of the introduction of a value added tax system by any Gulf Cooperation Council State after the date of the Order

"Order" means the purchase order issued by the University to the Contractor including all attachments, exhibits and documents referenced therein;

"Party" or "Parties" means the Contractor and/or University, as the context requires;

"Services" means all the services to be provided by the Contractor to the University, as more particularly described in the Order;

"Staff" means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor's obligations under these Terms and Conditions;

"University" means the American University of Sharjah ("AUS").

2. SERVICES

- 2.1 These Terms and Conditions shall apply to any arrangement between the Contractor and the University for the provision of the Services in an Order.

- 2.2 An Order constitutes an offer by the University to the Contractor to purchase the provision of Services subject to and in accordance with these Terms and Conditions.

- 2.3 The Order is conditional upon the Contractor's acceptance and the Contractor shall be deemed to have accepted and be bound by the Order upon (whichever is the earlier), the Contractor's express acceptance, or upon the Contractor:

2.3.1 commencing the Services; and/or

2.3.2 providing the Services; and/or

2.3.3 accepting payment in respect of the Services.

- 2.4 These Terms and Conditions shall prevail over any inconsistent terms or conditions contained in or referred to in a Contractor's quotation, invoice or acceptance correspondence or elsewhere or implied by trade custom or previous course of dealing. Nothing in these Terms and Conditions or the Order shall limit a Party's liability for any representations made fraudulently.

- 2.5 The University may by written notice to the Contractor at any time request a variation to the scope of the Services. In the event that the Contractor agrees to any variation to the scope of the Services, the Fees shall be subject to fair and reasonable adjustment to be agreed in writing between the University and the Contractor. No variation to an Order will be valid unless it is subject to advance written agreement between the Parties prior to the commencement or delivery of the varied Services.

3. **TERM**

These Terms and Conditions shall continue to be in full force and effect until the successful completion of the Services to the University's satisfaction as specified in the Order or the expiry of any warranty/defect liability period, whichever is later, unless either Party terminates earlier in accordance with the provisions in Clause 11 below.

4. **FEES AND PAYMENT**

- 4.1 The fees payable by the University to the Contractor for the provision of the Services shall be as stated in the Order (the "Fees") and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Services. Unless otherwise agreed in writing by the University, the Fees shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.
- 4.2 Upon completion of the Services in accordance with these Terms and Conditions to the satisfaction of the University, the Contractor shall submit an invoice digitally through the e-procurement system for the Services that have been completed and any other supporting documentation reasonably required by the University.
- 4.3 The University shall pay the Fees within 45 calendar days of the University's Finance Department validating the invoice (including supporting documents) from the Contractor, or as otherwise mutually agreed and specified in the Order. The University may, without prejudice to any other rights and remedies under these Terms and Conditions or as specified in the Order, withhold or reduce payments in the event of unsatisfactory performance by the Contractor.
- 4.4 The University shall pay the Contractor for any reasonable additional services (and associated expenses) provided at the University's request only where the Fee for such services and the nature of services have been subject to advance written agreement between the Parties.
- 4.5 The University shall have the right to set off from any Fees owed to the Contractor, any sums owed to the University by the Contractor.
- 4.6 If there is a dispute between the Parties as to the amount invoiced, the University shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate these Terms and Conditions for a failure to pay undisputed sums in accordance with Clause 11.3. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in Clause 17.

5. **CONTRACTOR'S OBLIGATIONS**

- 5.1 The Contractor in providing the Services to the University shall at all times:
- 5.1.1 act in the best interests of the University;
 - 5.1.2 provide the Services in a professional manner with all due care and skill;
 - 5.1.3 comply with all governmental regulations and any other legislation applicable to the provision of the Services; and
 - 5.1.4 advise the University as soon as it reasonably practical to do so, of any change in circumstances it becomes aware of in relation to provision of the Services.

6. UNIVERSITY'S OBLIGATIONS

- 6.1 The University shall provide the Contractor with such assistance as is reasonably necessary and required for the performance of the Services as contemplated under these Terms and Conditions.
- 6.2 If necessary, the University shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the University's premises by the Contractor or the employee's of the Contractor shall be at the Contractor's risk. If the Contractor supplies all or any of the Services at or from the Contractor's premises, on completion of the Services or termination or expiry of these Terms and Conditions (whichever is the earlier) the Contractor shall vacate the University's premises, remove the Contractor's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Contractor's premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the University's premises or any objects contained on the University's premises which is caused by the Contractor or any Staff, other than fair wear and tear.
- 6.3 The Contractor acknowledges and accepts that if the assistance required involves incurring third party costs, the Contractor will indemnify the University for those costs incurred.
- 6.4 The University shall ensure that any information or materials provided to the Contractor will be to the best of its knowledge accurate and not misleading in any way.

7. PERFORMANCE OF SERVICES

- 7.1 The time for delivery of the Services is stated in the Order and shall be of the essence. If the delivery dates cannot be met, the Contractor shall forthwith notify the University in writing indicating the cause of delay, best delivery date(s) and a plan of action to correct the situation. The Parties shall mutually agree extensions of time for delivering the Services and the Contractor shall extend completion of the Services accordingly with no entitlement to extra fees for the Services.
- 7.2 Where the Contractor experiences direct financial loss due to delays attributable to any act or omission of the University, the University may in its absolute discretion pay the Contractor additional reasonable fees to be mutually agreed between the Parties. In the absence of agreement between the Parties, a reasonable amount shall be calculated by the University in accordance with the rates identified in the Order.
- 7.3 In circumstances where the Services have been delayed or failures have occurred in the performance of the Services beyond a Party's reasonable control (the "Affected Party") as result of a Force Majeure Event acknowledged as such by the other Party, the Parties shall agree the appropriate course of action, which may include suspension of the Services and the Order. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. Provided that such circumstance has been communicated by the Affected Party to the other Party by written notice within 5 days of the Force Majeure Event, the Affected Party will be absolved from all liability in respect of the delay.
- 7.4 During the period of suspension, the Affected Party shall be obliged to mitigate its losses. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party. Where the Contractor is the Affected Party, the University shall in accordance with Clause 4 pay the Fees to the Contractor for Services rendered before the occurrence of the Force Majeure Event. Where the University is the Affected Party, the Contractor shall refund to the University any Fees paid by the University for the Services (or any relevant parts thereof) not delivered by the Contractor on the date of cancellation.

8. WARRANTIES AND LIABILITY

- 8.1 The Contractor warrants that:
- 8.1.1 the Services supplied shall be of satisfactory quality and in accordance with best industry standard;

- 8.1.2 the Services and any ancillary services required in relation to performance of its obligations shall be performed by appropriately trained and qualified personnel, with due care and skill and to at least the same standard to be expected of a Contractor experienced in providing services of the type in question; and
- 8.1.3 it will comply with all governmental regulations and any other legislation applicable to the provision of the Services.

9. **INSURANCE**

- 9.1 Throughout the period during which the Services are being provided, the Contractor undertakes to obtain the following insurance cover to:
- 9.1.1 insure against its contractual liabilities;
- 9.1.2 insure against employer's liability as may be deemed appropriate and relevant to its obligations and liabilities;
- 9.1.3 provide professional indemnity insurance where deemed appropriate to indemnify the University in full in accordance with the provisions of Clause 10 below; and
- 9.1.4 insure against liabilities for loss or damage to the University's property and/or equipment whilst performing the Services on the University's premises and reimburse the University for any losses incurred or repair or replace any damaged property and/or equipment.

10. **EXCLUSION AND LIMITATION OF LIABILITY**

- 10.1 The Contractor shall indemnify the University in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the University as a result of or in connection with a breach of contract by the Contractor in relation to the Services.
- 10.2 The aggregate maximum liability of the University arising out of a breach of contract or a negligent act/omission or wilful misconduct arising from the provision of the Services shall not in any circumstances exceed the aggregate Fees payable hereunder for any claim or series of claims arising hereunder
- 10.3 The University shall not be liable for any consequential loss, loss of profit, indirect loss or special loss or damage (including without limitation loss of business) howsoever arising (whether in contract, negligence or otherwise).
- 10.4 Neither Party limits or excludes liability for fraud, gross negligence or for death or personal injury caused by a Party's negligence.

11. **TERMINATION**

- 11.1 If the Contractor commits any breach of these Terms and Conditions or becomes insolvent or is subject to any form of insolvency proceedings, including but not limited to receivership, administration receivership or winding up proceedings or where applicable has received a judicial declaration of suspension of payment or shall pass a resolution for winding up (other than for the purposes of amalgamation or reconstruction) or a court shall make an order to that effect against it or shall enter into any composition or arrangement with its creditors, the University may without prejudice to its other rights and remedies or any part thereof terminate all Orders and the Contractor's obligation to provide the Services forthwith by written notice.
- 11.2 The University shall be at liberty to, prior to the commencement and/or delivery of the Services, whichever comes first, terminate an Order in whole or in part by written notice to the Contractor without prejudice to any other rights the University may have as a result thereof. The University shall have no liability to the Contractor for any losses or any indirect losses or have any other liability under the applicable law or otherwise whatsoever or howsoever arising from such termination of the Order.

- 11.3 The Contractor may terminate these Terms and Conditions by written notice to the University if the University has not paid any undisputed amounts within 90 calendar days of them falling due.
- 11.4 On termination under this Clause 11:
- 11.4.1 the Contractor shall, be entitled to render an invoice in respect of the Services completed prior to the termination notice issued by the University under this Clause 11 and the University will make payment in settlement of such invoice in accordance with Clause 4;
 - 11.4.2 the Contractor shall continue for a reasonable period after termination to answer any queries raised by the University and supply any information required by the University in connection with the Services and provide all reasonable assistance to the University and any incoming supplier of the Services;
 - 11.4.3 the Contractor shall ensure that all rights in respect of the Services completed before termination shall be and remain vested absolutely in the University; and
 - 11.4.4 the Contractor shall, and shall procure that the relevant Contractor's personnel shall, deliver up to the University all documents (including correspondence, lists of clients or customers, plans, drawings, accounts and other documents of whatsoever nature and all copies, whether on paper, computer memory or otherwise) made or compiled or acquired by the Contractor during the duration of the Order and concerning the business, finances or affairs of the University and any other property of the University, whether or not the same has been completed as part of the deliverables in accordance with these Terms and Conditions as soon as reasonably practicable.
- 11.5 Termination of an Order shall be without prejudice to the rights or obligations that either Party may have, which may have accrued up to the date of termination.
- 11.6 The Parties expressly agree that no court order, judgment, ruling, decision, award or any other judicial action or intervention shall be required in connection with the termination notice under this Clause 11.
- 11.7 Termination shall be without prejudice to any rights or remedies either party may have against the other in respect of any prior breach of these Terms and Conditions, provided that in no event shall the University be liable for any claim for loss of profits, loss of bargain and/or loss of opportunity in respect of any unexpired duration of the Order.
- 12. TAXES AND CUSTOMS DUTIES**
- 12.1 The Contractor hereby accepts and agrees to be responsible for payment of applicable customs duties and taxes imposed by any applicable government regulation or ordinance or other binding instrument in respect of the provision of the Services.
- 12.2 Notwithstanding the generality of this Clause 12, the Fees shall be inclusive of any GCC VAT which may become due in relation to the provision of the Services. The Contractor agrees to comply with any procedural requirements set out in the legislation relating to GCC VAT, including any requirements regarding the issue to the University of a valid VAT invoice in respect of the provision of the Services under these Terms and Conditions.
- 13. CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY**
- 13.1 Subject to Clause 13.2, each Party shall:
- 13.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
 - 13.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under these Terms and Conditions.

13.2 Notwithstanding Clause 13.1, a Party may disclose Confidential Information which it receives from the other Party:

13.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

13.2.2 to its auditors or for the purposes of regulatory requirements;

13.2.3 on a confidential basis, to its professional advisers;

13.2.4 where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under these Terms and Conditions provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this Clause 13.2.5 shall observe the Contractor's confidentiality obligations under these Terms and Conditions; and

13.2.5 where the receiving Party is the University:

(a) on a confidential basis to the employees, agents, consultants and contractors of the University;

(b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the University transfers or proposes to transfer all or any part of its business; and

(c) to the extent that the University (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.

For the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the University under this Clause 13.

13.3 The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the existence of or any part of these Terms and Conditions in any way, except with the prior written consent of the University.

14. DATA PROTECTION

14.1 The Contractor acknowledges and agrees that the University is permitted to hold and process personal (and sensitive) information and data about the Contractor, its Staff and any other suppliers to the Contractor who provide the Services from time to time as part of the University's records and the University may use such information in the course of the University's business.

14.2 The Contractor agrees that the University may, as necessary and appropriate for the Services contemplated under these Terms and Conditions, transfer and disclose such information to:

14.2.1 any sub-contractors, agents, service providers or associates of the University (including their employees, directors and officers);

14.2.2 any third parties, including where they are situated outside the United Arab Emirates and the Emirate of Sharjah; and

14.2.3 any governmental authorities, in response to their requests;

wherever located, including in jurisdictions other than the United Arab Emirates and the Emirate of Sharjah and jurisdictions which do not have data protection laws, in the event that such disclosure is in the University's view required for the proper conduct of the University's business or that of any associated company. This Clause 14 applies to information held, used or disclosed in any medium. The Contractor will procure the consent of any other relevant Staff or supplier of the Contractor to the terms of this Clause 14.

15. PREVENTION OF FRAUD AND CORRUPTION

- 15.1 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of these Terms and Conditions or for showing or refraining from showing favour or disfavour to any person in relation to these Terms and Conditions.
- 15.1.1 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by its Staff and the Contractor (including its shareholders, members and directors) in connection with these Terms and Conditions and shall notify the University immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 15.1.2 If the Contractor or its Staff engages in conduct prohibited by this Clause 15 or commits fraud in relation to these Terms and Conditions or any other contract with the University, the University may:
- 15.1.3 terminate these Terms and Conditions and recover from the Contractor the amount of any loss suffered by the University resulting from the termination, including the cost reasonably incurred by the University of making other arrangements for the supply of the Services and any additional expenditure incurred by the University throughout the remainder of these Terms and Conditions; or
- 15.1.4 recover in full from the Contractor any other loss sustained by the University in consequence of any breach of this Clause 15.

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 Except to the extent that the Services are provided in accordance with designs furnished by the University, the provision or use of the Services pursuant to these Terms and Conditions shall not infringe any intellectual property rights or moral rights, including but not limited to, any patent, trade mark, registered design, copyright or other right of any third party.
- 16.2 The Contractor hereby grants the University a non-exclusive, world-wide, perpetual, irrevocable, fully paid up royalty-free licence to copy, use and communicate without restriction all rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patterns, models, designs or other material furnished to the University by the Contractor, including making and using modifications (including translations into other languages) and to combine and incorporate such rights or such material from the rights with any other material for any purpose whatsoever.
- 16.3 The licence granted under this Clause 16 shall include the right to grant sub-licenses, transfer, novate to or assign for the foregoing purposes on like terms to any person without further limitation and at no cost to the University or any such person.
- 16.4 The Contractor shall indemnify the University against all costs, expenses, damages and any losses incurred or suffered (whether direct or indirect) including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the University as a result of or in connection with any dispute or contractual or other claims or proceedings brought against the University by a third party alleging that the provisions or use of the Services pursuant to these Terms and Conditions infringes its intellectual property rights or moral rights, except to the extent that any such losses are caused by any breach by the University of its obligations under these Terms and Conditions.
- 16.5 The obligations of the Contractor under this Clause 16 shall continue indefinitely notwithstanding termination of the Contractor's obligations under these Terms and Conditions.

17. DISPUTE RESOLUTION

- 17.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with these Terms and Conditions and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

- 17.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in Clause 17.1 above, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 17.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.
18. **GENERAL**
- 18.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under these Terms and Conditions, and that these Terms and Conditions are executed by its duly authorised representative. For the avoidance of any doubt, the Parties acknowledge and agree that it is the sole responsibility of the Contractor to obtain any necessary import and/or export licence(s) required in the provision of the Services as contemplated under these Terms and Conditions.
- 18.2 All notices are deemed to be served on a Party if sent by courier or fax to the address provided by a Party in the Order or any subsequent address from time to time notified to the other Party. A notice sent by courier will be deemed to have been served upon signing a courier receipt following delivery. A notice sent by fax will be deemed to have been served at the time of successful transmission, provided a confirmatory copy is also sent by post.
- 18.3 These Terms and Conditions cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 18.4 No failure or delay of by a Party in exercising its rights or remedies shall operate as a waiver unless made by written notice. A waiver by either Party of part of any breach of any of these Terms and Conditions shall not bind either Party hereto to a waiver of any succeeding or other breach of the same or any other term.
- 18.5 The Contractor shall not assign, transfer or sub-contract any of its rights or obligations in respect of an Order to a third party without the prior written consent of the University. The University may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, transfer or sub-contract. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 18.6 The University may assign, novate, or otherwise dispose of its rights and obligations under these Terms and Conditions without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor’s obligations under these Terms and Conditions.
- 18.7 If any of the provisions in these Terms and Conditions are judged to be illegal or unenforceable, the continuation in full force of the remainder of them will not be prejudiced.
- 18.8 The University is subject to certain regulatory requirements (including, but not limited to the UAE Ministry of Education) and as a result, the Contractor shall, upon request and reasonable prior notice, provide to or procure for the University and/or internal and/or external auditors and/or examiners of the University, copies of the Contractor’s records pertaining to the Services contemplated under these Terms and Conditions. The Contractor shall provide access to the Services and the premises at which the Contractor is performing the same to any internal and/or external auditors and/or examiners of the University.
- 18.9 These Terms and Conditions including all Orders constitute the entire understanding of the Parties and supersede all other representations, proposals, arrangements and communications whether oral, written, express or implied between the Parties regarding the subject matter hereof.

- 18.10 These Terms and Conditions may be executed by way of electronic signature digitally through the e-procurement system in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.
- 18.11 These Terms and Conditions will be governed by and construed in accordance with the Federal Law of the United Arab Emirates and the Emirate of Sharjah and the Parties agree to submit to the exclusive jurisdiction of the Courts of Sharjah.

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